

ONTARIO SUPERIOR COURT OF JUSTICE

(Toronto Region)

IN THE MATTER OF the *Competition Act*, RSC 1985, c C-34, as amended;

AND IN THE MATTER OF an investigation and inquiry under section 10(1)(b)(iii) of the *Competition Act*, concerning alleged activities of certain Residential Low Rise Concrete Forming Contractors and The Residential Low Rise Forming Contractors Association of Metropolitan Toronto and Vicinity, contrary to section 45 of the *Competition Act*;

AND IN THE MATTER OF an *ex parte* application by an authorized representative of the Commissioner of Competition for the issuance of warrants to enter, search and copy or seize for examination or copying certain records or other things pursuant to sections 15 and 16 of the *Competition Act*;

**INFORMATION OF KELLY MAHONEY
SWORN ON MARCH 22, 2012**

**INFORMATION TO OBTAIN
WARRANTS TO ENTER, SEARCH
AND COPY OR SEIZE FOR
EXAMINATION OR COPYING
CERTAIN RECORDS OR OTHER
THINGS PURSUANT TO SECTIONS 15
AND 16 OF THE *COMPETITION ACT***

**DÉNONCIATION VISANT À
OBTENIR LES MANDATS POUR
PÉNÉTRER, PERQUISITIONNER, ET
PRENDRE COPIE OU EMPORTER
POUR EXAMEN OU POUR
PRENDRE COPIE DE CERTAINS
DOCUMENTS OU CHOSES
CONFORMÉMENT AUX ARTICLES
15 ET 16 DE LA *LOI SUR LA
CONCURRENCE***

1. This is the Information of Kelly Mahoney (the “affiant”), of the City of Toronto in the Province of Ontario, an authorized representative of the Commissioner of Competition for the purposes of obtaining warrants to enter premises, search for records or other things, and copy or seize them for examination or copying pursuant to sections 15 and 16 of the *Competition Act*.

1. La présente constitue la dénonciation de Kelly Mahoney, de la ville de Toronto dans la province de Ontario, un représentant autorisé de la commissaire de la concurrence visant à obtenir les mandats pour entrer dans des locaux, y perquisitionner, y obtenir des documents ou choses, et en prendre copie, où les emporter pour examen ou pour en prendre copies conformément aux articles 15 et 16 de la *Loi sur la concurrence*.

I, Kelly Mahoney, of the City of Toronto in the Province of Ontario, make oath and say as follows:

- 1.1 I am a public officer and an authorized representative of the Commissioner of Competition (the “**Commissioner**”).
- 1.2 I am employed by the Competition Bureau (the “**Bureau**”) in the position of senior competition law officer (“**officer**”) in the Criminal Matters Branch (“**CMB**”), and have been in that position since October 2009. I joined the Civil Matters Branch (“**Civil**”) of the Bureau as a competition law officer in April 2005 and worked with Civil until I

joined the CMB in February 2007. I hold an Honours Bachelor of Arts degree in German Area Studies from McMaster University and a Bachelor of Laws degree from the University of Victoria.

- 1.3 Headed by the Commissioner, the Bureau is responsible for the administration and enforcement of the *Competition Act* (the “**Act**”), the *Consumer Packaging and Labelling Act*, the *Textile Labelling Act* and the *Precious Metals Marking Act*. The CMB is responsible for the administration and enforcement of a number of the criminal provisions in the Act, including the criminal provisions relating to agreements or arrangements to fix prices, allocate sales, restrict output, and rig bids.
- 1.4 As an officer in CMB, I have assumed a key role in several Bureau inquiries including the examination of more than 30 complaints, analyzing evidence, conducting interviews, and making recommendations to senior management and, for immunity, to the Public Prosecution Service of Canada. I have experience in investigating domestic and international cartels under the Act. In addition, my experience has included participation in the execution of search warrants issued under the Act on at least 6 occasions in relation to Bureau investigations into alleged conspiracies and bid-rigging offences.
- 1.5 I am currently the senior officer responsible for an ongoing inquiry initiated by the Commissioner pursuant to subparagraph 10(1)(b)(iii) of the Act (the “**Inquiry**”) in respect of an alleged conspiracy (the “**Conspiracy**”) relating to the sale and supply of low rise concrete forming services in Toronto and vicinity (“**Concrete Forming**”). The Inquiry was initiated on March 16, 2012, for the purpose of investigating certain activities of The Residential Low Rise Forming Contractors Association of Metropolitan Toronto and Vicinity (“**LRFA**”) and low rise Concrete Forming contractors, including Camp Forming Ltd. (“**Camp Forming**”), Canadian Concrete Forming Limited (“**Canadian Concrete**”), Erindale Concrete Forming Limited (“**Erindale**”), Formcrete (1994) Ltd. (“**Formcrete**”), Greenwall Concrete Forming Ltd. (“**Greenwall**”), Lee Rocca Forming Limited (“**Lee Rocca Forming**”), MCF Forming Contractors Inc. (“**MCF Forming**”), Mur-Wall Forming Inc. and 1012488 Ontario Limited doing business as Mur-Wall Concrete Forming (“**Mur-Wall**”), Orta Forming & Construction Ltd. (“**Orta Forming**”), Solid Wall Concrete Forming Ltd. (“**Solid Wall**”), Teskey Construction Co. Limited (“**Teskey**”), and other persons known and unknown regarding their participation in the Conspiracy from or about 1997 and which may still be ongoing.
- 1.6 I have personal knowledge of the matters hereinafter set out, except where such knowledge is specifically stated to be based on information and belief. Where I state my belief, the belief is based on my experience and knowledge as set out above and on the other information referenced in this Information.
- 1.7 In addition to my own actions, observations and personal knowledge, I have relied on a number of sources for the information set out below. I have carefully considered the reliability of all my other sources of information and I am satisfied that they are

trustworthy. As such, I have reasonable grounds to believe, and do believe, the information provided by each of these other sources to be true.

1.8 In this Information, the terms:

“**Alleged Co-conspirators**” refers to The Residential Low Rise Forming Contractors Association of Metropolitan Toronto and Vicinity, Camp Forming Ltd., Formcrete (1994) Ltd., Mur-Wall Concrete Forming Inc. and 1012488 Ontario Limited doing business as Mur-Wall Concrete Forming, Orta Forming & Construction Ltd., Teskey Construction Co. Limited and Frank Campoli, Renato Minuti, Louis Viola, Joe Spagnolo, and Mark Teskey;

“**Builder**” refers to Builders of new homes in subdivisions;

“**collective agreement**” refers to an employment contract negotiated and reached between the Residential Low Rise Forming Contractors Association of Metropolitan and Vicinity and the Labourers’ International Union of North America (L.I.U.N.A.), Local 183.

“**Contractor**” refers to any person, partnership or corporation engaged in concrete forming projects relating to low rise residential construction;

“**computer password**” has the meaning set out in subsection 342.1(2) of the *Criminal Code*;

“**computer program**” has the meaning set out in subsection 342.1(2) of the *Criminal Code*;

“**computer service**” has the meaning set out in subsection 342.1(2) of the *Criminal Code*;

“**computer system**” has the meaning provided by section 16 of the Act, as set out in subsection 342.1(2) of the *Criminal Code*;

“**data**” has the meaning provided by section 16 of the Act, as set out in subsection 342.1(2) of the *Criminal Code*;

“**data storage device**” refers to any device capable of storing data, whether electronic or otherwise, including, for example, computer hard drives, USB (**universal serial bus**) keys, CDs, DVDs, memory chips, cell phones, digital cameras, PDAs (**personal digital assistants**), flash drives and smart cards;

“**Immunity Program**” refers to a Bureau policy as outlined in the Immunity Program information bulletin, a publication that describes the roles, responsibilities, requirements, steps, timing and confidentiality of the immunity process. A person who cooperates with the Bureau in its investigation of criminal anti-competitive conduct under the Act may

benefit from a recommendation by the Bureau to the Director of Public Prosecutions of Canada to grant immunity from prosecution (transactional immunity) in exchange for complete, timely and ongoing cooperation with the Bureau's investigation;

"inquiry" refers to a formal investigation initiated under s.10(1)(b)(iii) when the Commissioner has reason to believe that an offence under Part VI or VII of the Act has been or is about to be committed;

"LRFA" refers to The Residential Low Rise Forming Contractors Association of Metropolitan Toronto and Vicinity. The LRFA is the accredited employer organization under the Ontario *Labour Relations Act*. As such, it is the bargaining agent for all employers of employees engaged in concrete forming construction for whom Local 183 has bargaining rights in Toronto and vicinity;

"Local 183" refers to the Labourers' International Union of North America (L.I.U.N.A.), Local 183. Local 183 is the sole and exclusive bargaining agent for all construction employees engaged in concrete forming in Toronto and vicinity;

"marker" as used in connection with the Bureau's immunity program refers to an initial request for immunity from prosecution typically made by the counsel for an applicant to the Bureau in return for the applicant's information about criminal offences committed by them under the Act;

"proffer" as used in connection with the Bureau's immunity program, refers to information about anti-competitive conduct that may be a criminal offence under the Act. It is usually provided to the Bureau orally by counsel for an applicant following a review of company records and interviews of company representatives. It may include an opportunity for the Bureau to examine records and interview witnesses;

"record" has the meaning provided by section 2 of the Act and includes any correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microform, sound recording, videotape, machine readable record (including computer data and electro-magnetic recordings in tape or disc form for use in computers or other devices for storing information) and any other documentary material, regardless of physical form or characteristics, and any copy or portion thereof.

OFFENCES

2. The affiant says that she has reasonable grounds to believe and does believe that the following offences under the Act have been committed by the following named persons or entities:

- 2.1 That The Residential Low Rise Forming Contractors Association of Metropolitan Toronto and Vicinity, Camp Forming Ltd., Mur-Wall Concrete Forming Inc. and 1012488 Ontario Limited, Orta Forming & Construction Ltd., and Frank Campoli, Louis Viola, Joe Spagnolo, and other persons known and unknown, during the period commencing on or about April 15, 1997, and continuing until March 11, 2010, the exact dates being unknown, at the City of Woodbridge and elsewhere in the Province of Ontario, were parties to an agreement or arrangement with respect to the sale and supply of low rise residential Concrete Forming that unduly lessened competition, contrary to paragraph 45(1)(c) of the *Competition Act*, R.S.C. 1985, c. C-34 (the “**Former Conspiracy Provision**”).
- 2.2 That Camp Forming Ltd., Mur-Wall Concrete Forming Inc. and 1012488 Ontario Limited, Orta Forming & Construction Ltd., and Frank Campoli, Louis Viola, Joe Spagnolo, and other persons known and unknown, during the period commencing on March 12, 2010, and continuing until at least October 3, 2011, at the City of Woodbridge and elsewhere in the Province of Ontario, were parties to an agreement or arrangement with respect to the sale and supply of low rise residential Concrete Forming, contrary to paragraph 45(1)(b) of the *Competition Act*, R.S.C. 1985, c. C-34, as amended (the “**Current Conspiracy Provision**”).
- 2.3 That The Residential Low Rise Forming Contractors Association of Metropolitan Toronto and Vicinity, during the period commencing on March 12, 2010, and continuing until at least October 3, 2011, at the City of Woodbridge and elsewhere in the Province of Ontario, having aided or abetted the agreement or arrangement among Camp Forming Ltd., Mur-Wall Concrete Forming Inc. and 1012488 Ontario Limited, Orta Forming & Construction Ltd., and Frank Campoli, Louis Viola, Joe Spagnolo, and other persons known and unknown with respect to the sale and supply of low rise residential Concrete Forming, is a party to the agreement or arrangement contrary to paragraph 45(1)(b) of the Current Conspiracy Provision.

INFRACTIONS

2. Le dénonciateur affirme qu'elle a des motifs raisonnables de croire et croit que les infractions suivantes à la Loi ont été commises par les personnes ou les entités suivantes, à savoir:

FORMER CONSPIRACY PROVISION (SECTION 45)

- 2.4 The Former Conspiracy Provision, which was in force until March 11, 2010, provided as follows:

45.(1) Every one who conspires, combines, agrees or arranges with another person

- (a) to limit unduly the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any product,*
- (b) to prevent, limit or lessen, unduly, the manufacture or production of a product or to enhance unreasonably the price thereof,*
- (c) to prevent or lessen, unduly, competition in the production, manufacture, purchase, barter, sale, storage, rental, transportation or supply of a product, or in the price of insurance on persons or property, or*
- (d) to otherwise restrain or injure competition unduly,*

is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million dollars or to both.

- 2.5 The decision of the Supreme Court of Canada (“Supreme Court”) in *Nova Scotia Pharmaceutical Society*⁹, often referred to as PANS, articulated the following requirements to establish a conspiracy offence under section 45(1) of the Act:

Actus reus

- i) the existence of an agreement in which two or more parties or alleged parties to the conspiracy participated;*
- ii) the agreement in question is likely to prevent or lessen competition unduly, such that there is a combination of market power, that is, the ability to behave relatively independently of the market, and behaviour likely to injure competition;*

Mens rea

- iii) the subjective intent of the parties concerned, such that the parties intended and did enter into an agreement; and*
- iv) the objective intent of the parties concerned to prevent or lessen competition unduly, such that the parties ought to have known that the agreement would lessen competition unduly.*

- 2.6 The undueness of an agreement is determined by a combination of the existence of market power based on the structure of the market in question and the conduct of the parties to the conspiracy. Market power has been defined by the Supreme Court in PANS as being able to act independently of the market in a passive way. The Supreme Court

⁹ *R. v. Nova Scotia Pharmaceutical Society*, [1992] 2 S.C.R. 606 (hereinafter “PANS”) at 653.

held that a moderate amount of market power is required to achieve this but that particularly injurious behaviour may also trigger liability even if market power is not so considerable. Accordingly, it is not necessary for the alleged parties to the conspiracy to dominate or substantially or completely control the market. The Supreme Court also held that the seriousness of any agreement depends on the facet or element of competition affected by the conspiracy and identified price as generally being considered to be the most important element of competition. In the residential Concrete Forming industry, price is a principal element of competition that drives Builders' choice of a contractor.

- 2.7 PANS requires that market power be determined by defining the relevant product and geographic markets. The information obtained in the investigation and from the Witness as defined below in paragraph 5.28 indicates that the relevant product is residential low rise Concrete Forming.
- 2.8 The main geographic market involved in these alleged offences is Toronto and vicinity in Ontario.
- 2.9 Evidence of an offence under section 45(1)(c) of the Act would be contained in records relating to meetings, communications and agreements among competitors, their employees and officers, and other corporate information including corporate business records regarding corporate structure, and the duties and responsibilities of employees and officers of the corporation. These records will contain evidence of the existence of an agreement or arrangement, the identity and intent of the participants to any agreement or arrangement, and the relationship of corporations as competitors.
- 2.10 Further evidence of an offence under section 45(1) of the Act would be contained in records relating to market information, pricing, pricing data, and historical data relating to entry and exit of firms from the Concrete Forming industry. These records will contain evidence of the structure of the relevant product and geographic markets and aid in the assessment of the degree of market power of the participants in the relevant market.

CURRENT CONSPIRACY PROVISION (SECTION 45)

- 2.11 On March 12, 2009, Bill C-10 received royal assent and significantly amended the Former Conspiracy Provision. The amendments came into force one year following royal assent (i.e., on March 12, 2010).
- 2.12 The Current Conspiracy Provision, which as noted above, came into force on March 12, 2010, provides as follows:

45.(1) Every person commits an offence who, with a competitor of that person with respect to a product, conspires, agrees or arranges

(a) to fix, maintain, increase or control the price for the supply of the product;

- (b) *to allocate sales, territories, customers or markets for the production or supply of the product; or*
- (c) *to fix, maintain, control, prevent, lessen or eliminate the production or supply of the product.*

(2) Every person who commits an offence under subsection (1) is guilty of an indictable offence and liable on conviction to imprisonment for a term not exceeding 14 years or to a fine not exceeding \$25 million, or to both.

COLLECTIVE BARGAINING EXEMPTION (SECTION 4 OF THE COMPETITION ACT)

2.13 The current collective bargaining exemption, which was in force throughout the period from 1997 to the present, provides as follows:

4(1) Nothing in this Act applies in respect of

- (a) combinations or activities of workmen or employees for their own reasonable protection as such workmen or employees;*
- (b) contracts, agreements or arrangements between or among fishermen or associations of fishermen and persons or associations of persons engaged in the buying or processing of fish relating to the prices, remuneration or other like conditions under which fish will be caught and supplied to those persons by fishermen; or*
- (c) contracts, agreements or arrangements between or among two or more employers in a trade, industry, or profession, whether effected directly between or among the employers or through the instrumentality of a corporation or association of which the employers are members, pertaining to collective bargaining with their employees in respect of salary or wages and terms or conditions of employment.*

PARTIES TO OFFENCE (SECTION 21 OF THE CRIMINAL CODE)

2.14 Section 21 of the *Criminal Code* provides as follows:

21. (1) *Every one is a party to an offence who*

- (a) actually commits it;*
- (b) does or omits to do anything for the purpose of aiding any person to commit it; or*
- (c) abets any person in committing it.*

Common intention

(2) Where two or more persons form an intention in common to carry out an unlawful purpose and to assist each other therein and any one of them, in carrying out the common purpose, commits an offence, each of them who knew or ought to have known that the commission of the offence would be a probable consequence of carrying out the common purpose is a party to that offence.

PARTIES TO OFFENCE (SECTION 22 OF THE CRIMINAL CODE)

2.15 Section 22 of the *Criminal Code* provides as follows:

22. (1) Where a person counsels another person to be a party to an offence and that other person is afterwards a party to that offence, the person who counselled is a party to that offence, notwithstanding that the offence was committed in a way different from that which was counselled.

Idem

(2) Every one who counsels another person to be a party to an offence is a party to every offence that the other commits in consequence of the counselling that the person who counselled knew or ought to have known was likely to be committed in consequence of the counselling.

Definition of "counsel"

(3) For the purposes of this Act, "counsel" includes procure, solicit or incite.

**RECORDS OR OTHER THINGS TO
BE SEARCHED FOR**

3. The affiant says that she has reasonable grounds to believe and does believe that the following records or other things exist at the premises described in paragraph 4 and will afford evidence with respect to the offences described in paragraph 2, or will assist in retrieving, copying, reading, deciphering or acquiring the substance or meaning of any data contained therein:

**DOCUMENTS OU AUTRES CHOSES
QUI FONT L'OBJET DE LA
PERQUISITION**

3. Le dénonciateur affirme de plus qu'elle a des motifs raisonnables de croire et croit que les documents ou autres choses suivants se trouvent dans les locaux décrits au paragraphe 4 et qu'ils fourniront la preuve de la commission des infractions décrites au paragraphe 2, ou contribueront à la copie, la lecture, le décodage ou la compréhension de toute information ou donnée contenues dans ces documents:

RECORDS AND OTHER THINGS TO BE SEARCHED FOR

- 3.1 Based on my experience described in paragraph 1.4 of this Information, including my experience dealing with business records as an officer, the information provided by Lou Rocca referred to in paragraph 5.32, and based on the information disclosed hereafter, I believe that the records or other things to be searched for are the sorts of records that would have been created by, or would be in the possession of, the Alleged Co-conspirators mentioned in paragraph 1.8 of this Information.
- 3.2 In particular, I have reasonable grounds to believe, and do believe, that the following records or other things, whenever created, are linked directly or indirectly to the commercial activities of the Alleged Co-conspirators or their owners, officers, directors, managers, employees, representatives or agents and will afford evidence with respect to the offences alleged in paragraphs 2.1 to 2.3 of this Information:

Corporate Structure

- (a) all records relating to the corporate structure of the Alleged Co-conspirators and/or the ownership, control or management of the Alleged Co-conspirators by their owners, officers, directors, managers, employees, representatives and agents. These records will afford evidence of the corporate structure of the Alleged Co-conspirators, as well as evidence of the ownership, control or management of the Alleged Co-conspirators;

Identities

- (b) all records relating to the names, positions, duties, responsibilities, authority and compensation of the owners, officers, directors, managers, employees, representatives and agents of the Alleged Co-conspirators. These records will afford evidence of the identities of and roles played by the Alleged Co-conspirators' owners, officers, directors, managers, employees, representatives and agents with respect to the marketing, sales and operations of the Alleged Co-conspirators' businesses as it relates to Concrete Forming;
- (c) all records or other things relating to the names, positions, duties, responsibilities, authority and compensation of the owners, officers, directors, managers, employees, representatives and agents of the Alleged Co-conspirators participating in meetings or other communications or engaged in the preparation, formulation, adoption, revision, adjustment, rescission, continuation, implementation, observance or application of pricing, promotion, marketing policies or other competitive practices concerning the sale and supply of Concrete Forming, including in the context of any request from Builders for quotations or prices for Concrete Forming. These records will afford evidence of the identities of and roles played by the Alleged Co-conspirators;

Agreement

- (d) all records or other things relating to the preparation, formulation, adoption, revision, adjustment, rescission, continuation, implementation, observance, announcement, application or determination of pricing, promotion, marketing policies or other competitive practices concerning the sale and supply of Concrete Forming, including in the context of any request for quotations or prices of Concrete Forming. These records will afford evidence to establish that the Alleged Co-conspirators were competitors that entered into an agreement or arrangement among themselves and/or with other competitors and had knowledge of the terms of the agreement or arrangement;

- (e) all records or other things relating to meetings, communications, agreements or arrangements, direct or indirect, between or among any of the Alleged Co-conspirators and their competitors, between or among the Alleged Co-conspirators and other persons, or between or among any of their respective owners, officers, directors, managers, employees, representatives and agents concerning the price, sale and supply of Concrete Forming. These records will afford evidence to establish that the Alleged Co-conspirators entered into an agreement or arrangement among themselves and/or with other competitors and had knowledge of the terms of the agreement or arrangement;
- (f) all records or other things relating to business, entertainment, travel and similar expenses incurred by the Alleged Co-conspirators, their competitors or other persons, as well as their respective owners, officers, directors, managers, employees, representatives and agents, including invoices for cellular phone communications and statements used for the purpose of reimbursement. These records will afford evidence to establish that the Alleged Co-conspirators entered into an agreement or arrangement among themselves and/or with other competitors and had knowledge of the terms of the agreement or arrangement;
- (g) all records or other things relating to any request for quotations or prices with respect to Concrete Forming, including the request for quotations or prices, communications between the Alleged Co-conspirators and their competitors or other persons in connection with the request for quotations or prices. These records will afford evidence to establish that the Alleged Co-conspirators and their competitors or other persons exchanged quotations or prices prepared for submission to Builders;
- (h) records created by the LRFA or Local 183 including rules and regulations, constitutions, by-laws, procedures and records including the agendas, minutes and attendance records of the LRFA's board of directors meetings, executive committee meetings, disciplinary committee meetings, and annual general meetings, or any notes taken at or of these meetings; and records and/or reports containing information relating to the price, supply or sale of Concrete Forming services. These records will afford evidence to establish that the Alleged Co-conspirators entered into an agreement or arrangement among themselves and/or with other competitors and had knowledge of the terms of the agreement or arrangement;

Competitive Effect

- (i) all records or other things relating to sales, revenues, expenses, markets, market shares and profits, including historical, actual and forecast of the Alleged Co-conspirators or other persons that show or that would assist in showing the market

positions of the persons supplying Concrete Forming services. These records will afford evidence that competition was affected unduly;

- (j) all records or other things relating to barriers to entry, including but not limited to: the collective agreement, bonds, letters of credit, prohibition on subcontracting and piecework, and industry fund remittances. These records will afford evidence that competition was affected unduly;
- (k) All records or other things that could be used as similar fact evidence.

OTHER THINGS TO BE SEARCHED FOR

- 3.3 Any five (5) original business records or other things that contain examples of the handwriting of the owners, officers, directors, managers, employees, representatives or agents of the Alleged Co-conspirators. These original handwriting samples are necessary for comparison purposes in the event that the question of authorship of a record becomes relevant.
- 3.4 Samples of any telephone facsimile communications sent or received that may be required to identify the source or recipient of telephone facsimile communications among the Alleged Co-conspirators and/or their competitors.
- 3.5 Computer passwords, computer programs, computer services, computer systems, data storage devices and associated documentation, including operating instructions, manuals and service records, that will assist in retrieving, copying, reading, printing, deciphering or acquiring the substance or meaning of any data seized, together with all passwords, log-on codes, encryption keys or other security devices relating to these things.
- 3.6 All records or other things described in paragraph 3.2 to paragraph 3.5 of this Information contained in or available to any computer system on the premises to be searched.

PREMISES TO BE SEARCHED

LES LOCALS VISÉ PAR LA PERQUISITION

- 4. **The premises to be searched are described as:**

- 4. **Les locaux visé par la perquisition sont le suivant:**

I have reasonable grounds to believe, and do believe, that the aforementioned records or other things to be searched for are located on the following premises:

- a) Camp Forming Ltd.
150 Creditstone Road,
Vaughan, Ontario
L4K 1P2
- b) Mur-Wall Forming Inc. and 1012488 Ontario Limited doing business as Mur-Wall
Concrete Forming
50 Pippin Road, Suite / Unit 61
Concord, Ontario
L4K 4M4
- c) Orta Forming & Construction Ltd.
180 Regina Road
Woodbridge, Ontario
L4L 8L6
- d) The Residential Low Rise Forming Contractors Association of Metropolitan Toronto
and Vicinity
4550 Highway 7 West, Suite 235
Woodbridge, Ontario
L4L 4Y7

and in each case including all storage, record keeping areas, computer systems and data storage devices located in and about these premises, accessible from these premises or available to computer systems or data storage devices from these premises and under the control of the occupant(s) of the premises in question (collectively, the “premises to be searched”).

REASONABLE GROUNDS

MOTIFS RAISONNABLES

5. The following information constitutes the reasonable grounds for my belief supporting my information to obtain search warrants:

5. Les renseignements suivants contiennent les motifs raisonnables qui fondent ma croyance, afin que soit décerné les mandats de perquisition demandés dans cette dénonciation:

5.1. Below is an overview of the product, the industry and the investigation. Following this overview is an assessment of the reliability of my investigative sources and details regarding the identity of the Alleged Co-conspirators. I then outline my reasonable grounds to believe that offences under the former and current section 45 of the Act have been committed, things to be searched for are at the premises to be searched and of the necessity to search computer systems.

OVERVIEW OF THE PRODUCT

5.2. Concrete Forming involves taking panels which are usually made out of wood and steel, standing them upright and pouring concrete between them. The forms are removed when the concrete is set, resulting in walls.

5.3. The term low rise means a one pour situation. In residential low rise Concrete Forming, the Contractors are generally forming and pouring the foundations of a house.

OVERVIEW OF THE INDUSTRY

5.4. The low rise residential Concrete Forming industry refers to Contractors pouring the basement foundation walls for single and multi-unit (town and semis) homes. The Contractors are hired by home building companies, such as Mattamy Homes or Greenpark Homes, who build homes in subdivisions (Builders). Each subdivision contains several models.

5.5. Contractors submit quotes to Builders for projects, based on linear feet of wall required for each model. The summer construction season runs from April 16 to October 31. Winter construction season runs from November 1 to April 15. Rates for Concrete Forming increase during the winter construction season.

- 5.6. In Toronto and vicinity, all major Builders require that the Contractors employ unionized workers. The LRFA is the accredited employer organization that bargains with Local 183 on behalf of the Contractors. Local 183 is the bargaining agent for the employees of Contractors involved in Concrete Forming.

OVERVIEW OF THE INVESTIGATION

- 5.7. During the period dating back to approximately February 1997, representatives of various Contractors, including Frank Campoli of Camp Forming, Louis Viola of Mur-Wall, and Joe Spagnolo of Orta Forming, formed part of the Board of Directors of the LRFA. Through the LRFA, the Alleged Co-conspirators allegedly participated in, and may be continuing to participate in, meetings, telephone conversations and other forms of communication among themselves and/or with their competitors for the purpose of exchanging competitively-sensitive information, fixing prices and allocating customers in respect of the sale and supply of Concrete Forming in Toronto and vicinity.
- 5.8. In June 2010, the Bureau received a complaint from A.C. Concrete Forming Ltd. (“**AC Concrete**”) alleging abuse of dominance and collusion by the LRFA. A.C. Concrete is owned and operated by Alfredo Catarino (“**Catarino**”). Catarino provided information in three interviews related to the allegations and also provided documents for review. A summary of the information related to the allegation of collusion provided by Catarino, upon which I am not relying, is contained in paragraphs 5.110 to 5.116. Catarino has had long-standing disputes with the LRFA and Local 183 which are set out in Appendix A.
- 5.9. In September 2010, pursuant to the Competition Bureau’s Immunity Program, Halton Forming (1992) Ltd. (“**Halton Forming**”) requested a marker for immunity for its involvement in the alleged Concrete Forming Conspiracy. The marker was subsequently granted by the Bureau on September 6, 2010. Attached as Exhibit #1 is a copy of the Bureau’s Immunity Program information bulletin and FAQs.
- 5.10. Counsel for Halton Forming provided a proffer to the Bureau in December 2010. The President of Halton Forming, Lou Rocca (“**Rocca**”), was subsequently interviewed on two occasions. Documents made available by Halton Forming were reviewed by the Bureau’s investigative case team. Although Rocca provided information with respect to the alleged Concrete Forming Conspiracy, no information indicated that Halton Forming engaged in behavior contrary to the Act. As a result, the immunity marker was withdrawn by the Bureau on October 25, 2011. Halton Forming is not a target of the Bureau’s investigation.
- 5.11. Subsequent to the withdrawal of the marker, Rocca continued to cooperate voluntarily with the Bureau’s investigation. He was interviewed on two occasions and additional information was provided by email and over the telephone. Rocca also voluntarily provided documents to the Bureau. In addition, Rocca advised me that in 2010 he

attended at the LRFA office and at that time there were records located in the office that he believes would be relevant to the Bureau's investigation.

- 5.12. This investigation involves previous and potentially ongoing conduct by the Alleged Co-conspirators, and other persons known and unknown alleged to be contrary to the Former Conspiracy Provision and the Current Conspiracy Provision (section 45) of the Act.
- 5.13. An inquiry under s.10 of the Act was commenced on March 16, 2012.

The Alleged Conduct

- 5.14. The available facts provide reasonable grounds to believe that the Alleged Co-conspirators, and other persons known and unknown, intended to, and did, enter into alleged agreements contrary to the former section 45(1)(c) of the Act, beginning at least as early as 1997 and continuing to March 11, 2010.
- 5.15. The available facts provide reasonable grounds to believe that the LRFA, whose membership consists of the majority of large Contractors who compete with one another in Toronto and vicinity, and the other Alleged Co-conspirators, and other persons known and unknown, agreed to fix prices of Concrete Forming services and to allocate Builders.
- 5.16. The available facts provide reasonable grounds to believe that the LRFA Board members that abided by the alleged agreements have significant market share in the Concrete Forming market in Toronto and vicinity. In addition, there are restrictive clauses in the collective agreement that erected or enhanced barriers to entry and expansion, limiting the number and expansion of Contractors in the Concrete Forming market in Toronto and vicinity. Together, this provided the LRFA Board members that abided by the alleged agreements with adequate market power such that the alleged agreements unduly lessened competition in the Concrete Forming market in Toronto and vicinity.
- 5.17. The available facts also provide reasonable grounds to believe that the Alleged Co-conspirators, and other persons known and unknown, intended to, and did, enter into an alleged agreement to allocate Builders contrary to the current section 45(1)(b) of the Act, beginning March 12, 2010 and continuing to at least until October 3, 2011.
- 5.18. The available facts provide reasonable grounds to believe that the LRFA Board members and their respective companies were competitors operating in the low rise Concrete Forming market in Toronto and vicinity.
- 5.19. The available facts provide reasonable grounds to believe that the LRFA facilitated the agreement to allocate Builders among the Alleged Co-conspirators, and other persons known and unknown. As such, the LRFA is considered to have aided and abetted or,

alternatively, to have counselled the alleged agreement within the meaning of section 21 or section 22 of the *Criminal Code*.

INVESTIGATIVE SOURCES

- 5.20. In addition to my own actions, observations and personal knowledge, this Information is based on information and records received or obtained from representatives of the Commissioner, witnesses and internet websites. The details concerning the credibility and reliability of the information sources themselves are set out below.

Representatives of the Commissioner

- 5.21. Where information is stated in this Information to have been received by me or other officers of the Bureau, I truly believe such information in each and every case, because the officers giving or relaying the information were acting in the execution of their duties as officers at the relevant time and as such were under a legal and moral obligation to relay only the truth in relation to the events perceived or transmitted by them, insofar as it was possible for them to do so.

Stephan Luciw

- 5.22. Stephan Luciw has been employed by the CMB of the Bureau since 2002. He holds the position of Senior Competition Law Officer. In particular, Officer Luciw did surveillance and took pictures and notes of the potential search sites as listed in paragraph 5.41. Given Officer Luciw's experience and for the reasons set out in paragraph 5.21 of this Information, I have reasonable grounds to believe, and do believe, the information received from Officer Luciw to be true.

Dejana Milinkov

- 5.23. Dejana Milinkov has been employed by the CMB of the Bureau since 2009. She holds the position of Enforcement Support Officer. In particular, Officer Milinkov did surveillance and took pictures and notes of the potential search sites as listed in paragraph 5.41. Given Officer Milinkov's experience and for the reasons set out in paragraph 5.21 of this Information, I have reasonable grounds to believe, and do believe, the information received from Officer Milinkov to be true.

Elizabeth Eves

- 5.24. Elizabeth Eves has been employed by the CMB of the Bureau since 2006. She holds the position of Competition Law Officer. In particular, Officer Eves is the primary officer in this matter and conducted interviews and spoke to the complainants. Given Officer Eves'

experience and for the reasons set out in paragraph 5.21 of this Information, I have reasonable grounds to believe, and do believe, the information received from Officer Eves to be true.

Laura Grieveson

- 5.25. Laura Grieveson has been employed by the Bureau since 2006. She holds the position of Enforcement Support Officer. In particular, Officer Grieveson did research and took notes at interviews for this matter. Given Officer Grieveson's experience and for the reasons set out in paragraph 5.21 of this Information, I have reasonable grounds to believe, and do believe, the information received from Officer Grieveson to be true.

Clifford Smith

- 5.26. Clifford Smith has been employed by the Bureau since 2007. He is a member of the Bureau's Electronic Evidence Unit and holds the position of Competition Law Officer. In particular, Officer Smith provided information pertaining to electronic evidence procedures. Given Officer Smith's experience and for the reasons set out in paragraph 5.21 of this Information, I have reasonable grounds to believe, and do believe, the information received from Officer Smith to be true.

André Soulière

- 5.27. André Soulière has been employed by the Bureau since 1998. He holds the position of Research Officer in the Bureau Resource Centre. In particular, Officer Soulière conducted corporate research pertaining to the Alleged Co-conspirators. Given Officer Soulière's experience and for the reasons set out in paragraph 5.21 of this Information, I have reasonable grounds to believe, and do believe the information received from Officer Soulière to be true.

Witnesses

Lou Rocca

- 5.28. Lou Rocca (Rocca) is the President of Halton Forming, a business he took over from his father in 1992. Halton Forming is focused on higher volume, lower margin Concrete Forming work and uses highly mechanized and lighter technology. With the new technology, Halton Forming began to subcontract the work to unionized pieceworkers in or around 1998.
- 5.29. As a result of the new technology and subcontracting to unionized pieceworkers, Halton Forming was able to lower its prices between 15% and 20%. Halton Forming consistently priced below prices charged by other LRFA Contractors and bid away business from other members of the LRFA.

- 5.30. Rocca was a Director on the LRFA Board of Directors from April 1997 until September 2010.
- 5.31. Rocca initially approached the Bureau to request immunity under the Bureau's Immunity Program. Under the Immunity Program Rocca provided information of the alleged offence of price fixing and market allocation by the Board of Directors (the Board) of the LRFA. However, the information established that although Rocca was aware of the illegal conduct he was not party to it and strenuously opposed the illegal behaviour of the other Board members. In October 2011, Rocca's request for Immunity was withdrawn and Rocca continues to co-operate with the Bureau's investigation.
- 5.32. I have participated in interviews with Rocca on four (4) occasions and he has provided the Bureau with minutes of Board of Directors meetings from April 1997 until September 2010. During these interviews Rocca provided information with respect to the conduct of the LRFA and its Board of Directors set out below in paragraphs 5.52 to 5.88. Rocca believes various decisions taken by the Board of Directors with respect to particular provisions of the collective agreement were designed to adversely affect Halton Forming and its ability to compete in the Concrete Forming industry in Toronto and vicinity. According to Rocca, the provisions contained in the collective agreement have seriously impacted Halton Forming's business.
- 5.33. Rocca voiced his opposition to many of the Board's decisions and conduct. He has indicated that he believes this to be the reason why he was not re-elected to the Board in 2010.
- 5.34. Halton Forming has been grieved by Local 183 on a number of occasions often related to its use of subcontractors and pieceworkers. In 2009, Local 183 filed a grievance against Halton Forming alleging a violation of the collective agreement for subcontracting work and for compensation being paid on piecework basis. This grievance has not been pursued by Local 183.
- 5.35. On June 3, 2011, Halton Forming submitted a notice of arbitration to the LRFA. In it, Halton Forming alleges various breaches of the *Ontario Corporations Act* by the Board of Directors, Officers, and Executive Committee of the LRFA. Additionally, it alleges breaches of the *Income Tax Act* and the *Ontario Labour Relations Act*. On June 6, 2011, the LRFA filed a motion of Arbitration against Halton Forming and Lou Rocca for alleged violations of the LRFA Constitution and By-Laws seeking damages for \$10 million. The matter was referred for mediation on March 20 and 21, 2012.
- 5.36. I regard Rocca to be a reliable source of information and I believe the information that he has provided to the Bureau to be true. Rocca has operated in the Concrete Forming industry since 1992 and is very knowledgeable about the industry. He provided information to the Bureau pursuant to the Immunity Program which requires Rocca to provide full, complete, frank and truthful disclosure. His information has been consistent and in several cases has been corroborated with letters that were written contemporaneously to the events that he described. Attached as Exhibits # 2, # 3 and # 4